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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROSARIO OLEO,

Defendant and Appellant.

B235064

(Los Angeles County  
Super. Ct. No. YA077789)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Victor L. Wright, Judge. Affirmed.

William W. Stewart; and Kenneth H. Lewis for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M.  
Roadarmel, Jr. and Victoria B. Wilson, Deputy Attorneys General, for Plaintiff and  
Respondent.

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Following the denial of a motion to suppress evidence, Rosario Oleo pleaded guilty to several drug-related offenses, and was sentenced to five years of formal probation. On appeal, Oleo contends the methamphetamine found in the glove compartment of his car should have been suppressed as the fruit of an unlawful search. We affirm the judgment.

### **FACTUAL AND PROCEDURAL HISTORY**

At the outset of the hearing on the suppression motion, counsel stipulated there was a lawful basis for the traffic stop, and the only issue was the reasonableness of the ensuing search of the car's glove compartment.

Testimony at the suppression hearing established that on the afternoon of February 26, 2010, Inglewood Police Officer Shea McCurdy and his partner initiated a traffic stop of Oleo's car. The officers approached and had Oleo, and his passenger get out of the car and sit on the curb. McCurdy asked Oleo for his driver's license, and Oleo provided it to him. McCurdy then asked Oleo where the registration was for the car, and Oleo answered, "I don't know." McCurdy entered Oleo's car and looked into the glove compartment for the registration. Inside, McCurdy found a plastic baggie containing crystal methamphetamine.

At the conclusion of the hearing, the trial court found Officer McCurdy had conducted a lawful search for the car's registration and not as a pretext to discover evidence of a crime.

Oleo entered a plea to the court to the charges of transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), possession for sale of a controlled substance (Health & Saf. Code, § 11351), and possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)). He also admitted he had previously been convicted of a drug-related offense (Health & Saf. Code, § 11370.2, subd. (a)). The trial court sentenced Oleo to an aggregate state prison term of six years, stayed execution of sentence and placed Oleo on five years of formal probation, on condition he serve 365 days in county jail, with two days credit for time served.

## DISCUSSION

### 1. *Standard of Review*

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891; *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.<sup>1</sup> (*Hoyos, supra*, at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

### 2. *The Search of the Glove Compartment for the Car Registration was Lawful*

As he did before the trial court, Oleo argues that by ordering him and his passenger out of the car and then looking into the glove compartment on his own, Officer McCurdle improperly conducted a pretextual search for evidence of a crime.<sup>2</sup>

The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures and applies to the states through the Fourteenth Amendment. (U.S. Const., 4th & 14th Amends.; *People v. Camacho* (2000) 23 Cal.4th 824, 829-830; see *Mapp v. Ohio* (1961) 367 U.S. 643 [81 S.Ct. 1684,, 6 L.Ed.2d 1081], limited on another ground in *United States v. Leon* (1984) 468 U.S. 897, 906 [104 S.Ct. 3405, 82 L.Ed.2d 677].) Under the Fourth Amendment, reasonableness is determined by balancing the need to search against the invasion that the search entails. (*Terry v. Ohio* (1968) 392 U.S. 1, 20-21 [88 S.Ct. 1868, 20 L.Ed.2d 884].)

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<sup>1</sup> Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. (Cal. Const., art. I, § 28; *In re Randy G.* (2001) 26 Cal.4th 556, 561-562; *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

<sup>2</sup> Because Oleo stipulated at the outset of the hearing that the officers' stop of his car was constitutionally reasonable, he has forfeited any challenge to its lawfulness on appeal.

Although motorists have a privacy interest against unreasonable searches and seizures, it is also well established that in view of the pervasive regulation of vehicles, individuals have a reduced expectation of privacy while driving on public roadways. (*In re Arturo D.* (2002) 27 Cal.4th 60, 68 (*Arturo D.*).)<sup>3</sup> It is well settled that an officer may stop a motorist to conduct a brief investigation when the facts and circumstances known to the officer support a reasonable suspicion that the driver has committed a traffic (Vehicle Code) violation, as occurred in this case. (*People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 200.) In connection with the investigatory stop, the police officer may also order the occupants of the vehicle out of the car. (*Pennsylvania v. Mimms* (1977) 434 U.S. 106, 111 [98 S.Ct. 330, 54 L.Ed.2d 331] (*Mimms*).) In *Mimms*, the Supreme Court ruled that in view of the inherent danger posed to police officers during routine traffic stops, the intrusion into the driver's personal liberty occasioned by an order to get out of the car is *de minimis*; "[w]hat is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety." (*Id.* at p. 111.)

As part of this investigatory stop, police are authorized to request the driver produce his driver's license and evidence of registration of the vehicle. (Veh. Code, §§ 4462 & 12951; *In re Arturo D.*, *supra*, 27 Cal.4th at p. 67.) An officer who has properly stopped a vehicle for a traffic infraction needs to determine the identities of the driver and the owner of the vehicle to include that information on the citation he or she will issue. (*Ibid.*) When the driver refuses or fails to produce registration or other identifying documentation on demand, the officer may conduct a limited warrantless search of the vehicle in the area where the necessary documentation may be expected to be found. (*Id.* at pp. 78-79.) *Arturo D.* labeled such a search a "Webster-type search"

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<sup>3</sup> This reduced expectation of privacy extends to property transported in cars, "“which “trave[l] public thoroughfares,” [citation], “seldom serv[e] as . . . the repository of personal effects,” [citation], are subjected to police stop and examination to enforce “pervasive” governmental controls “[a]s an everyday occurrence,” [citation], and, finally, are exposed to traffic accidents that may render all their contents open to public scrutiny.” [Citation.]” (*People v. Hart* (1999) 74 Cal.App.4th 479, 490, quoting *Wyoming v. Houghton* (1999) 526 U.S. 295, 303 [119 S. Ct. 1297, 143 L. Ed. 2d 408].)

based on the case of *People v. Webster* (1991) 54 Cal.3d 411 (*Webster*), “the leading case on this subject.” (*In re Arturo D.*, *supra*, 27 Cal.4th at pp. 68, 73.) In *Webster* the officer conducting the traffic stop and removed the occupants from the car in order to look for the registration documents. (*Webster*, *supra*, 54 Cal.3d at p. 429.) All of the occupants had disclaimed ownership, and the court concluded that the officer was entitled to search personally for the papers in the interest of his own safety. (*Id.* at pp. 429, 431.) The court found the officer had properly confined his search to the visor and glove compartment where auto registration documents are traditionally kept. (*Id.* at p. 431.) As stated in *Arturo D.*, “[p]rior to and subsequent to *Webster* . . . , California courts have held in analogous circumstances that it is constitutionally proper for an officer to conduct a limited warrantless search of a vehicle for the purpose of locating registration and other related identifying documentation.” (See *Arturo D.*, *supra*, 27 Cal.4th at p. 71 and cases cited therein.)

*Webster* and *Arturo D.* firmly established the “document search exception” to the warrant requirement. In so doing the California Supreme Court described the common justifications for such a search, namely the driver is unable to or has refused to produce the documentation. In *Arturo D.*, as in *Webster*, the driver could not provide proof of registration or his license; the driver told the officer that he did not have a license and that the vehicle did not belong to him.<sup>4</sup> Although the *Arturo D.* court found the officer’s search was justified based on a failure to produce the requested documentation, the court also recognized the search may have been justified for an independent reason -- officer safety concerns. (*Id.* at p. 85, fn. 23 & p. 87, fn. 28.) In recognizing “officer safety concerns” as a permissible independent basis to conduct a limited document search of a

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<sup>4</sup> The Supreme Court considered the *Arturo D.* case along with another appeal in *People v. Hinger* that raised the same challenges to a warrantless search and involved a similar situation where the driver told the officer that he did not have his driver’s license or any documentation concerning the car. (*In re Arturo D.*, *supra*, 27 Cal.4th at pp. 66-67.)

vehicle, the Supreme Court cited *People v. Faddler* (1982) 132 Cal.App.3d 607, 610-611<sup>5</sup> and *People v. Hart* (1999) 74 Cal.App.4th 479<sup>6</sup> for the proposition that “[i]n the ordinary situation where the safety of the officer or the public is not endangered thereby, a driver may himself retrieve and present his license for examination by an investigating officer.” (*People v. Faddler, supra*, 132 Cal.App.3d at p. 610.) If officer safety warrants, however, the officer may control the movements of the vehicle’s occupants and retrieve the license himself. (*Ibid.*; accord, *People v. Webster, supra*, 54 Cal.3d at p. 431.)

In light of these standards, we agree with the trial court and conclude Officer McCurdle’s actions were constitutionally reasonable. Preliminarily McCurdle acted within his authority under *Mimms* in ordering Oleo and his passenger out of the vehicle. McCurdle testified he had them step out of the car for two reasons, both of which related to officer safety concerns: First, the car had been stopped on a busy street and it was safer for McCurdle and his partner to conduct their investigation on the sidewalk, away

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<sup>5</sup> In *Faddler*, an officer observed a vehicle being driven erratically at 2:00 a.m. A passenger was leaning out of a window holding a liquor bottle. When the officer executed a stop, he found three men in the car. One of the passengers appeared intoxicated, and the other was boisterous. The driver told the officer his driver’s license was in the glove compartment and started to retrieve it, but the officer ordered him to stay where he was and opened the front passenger door to get the license. When he opened the door, he found, in plain view, a baggie containing marijuana. (132 Cal.App.3d at p. 609.) The Third District Court of Appeal held the search was lawful because to have allowed the driver to “rummage about” in the car would have “diminish[ed] the officer’s control over a potentially dangerous situation and creat[ed] a potential threat to his safety and that of the public. [Citations.]” (*Id.* at pp. 610-611.) The Court concluded: “We are satisfied that no constitutional rights are implicated by the type of minimal intrusion which occurred here, given its limited objective, legitimate purpose, and the exigent circumstances which practically prohibited the accomplishment of that purpose in any other way than was done.” (*Id.* at p. 611.)

<sup>6</sup> In *Hart* the court upheld a search of a purse inside a van for identification purposes. In *Hart*, a police officer asked the defendant for identification. After the defendant searched the floor of the van for several minutes, the officer asked the defendant to step out of the van. Because the officer was concerned for his safety, he searched the van for weapons. (*People v. Hart, supra*, 74 Cal.App.4th at p. 485,) During his search he noticed a purse, which he searched for identification. (*Ibid.*)

from traffic. (See *Mimms, supra*, 434 U.S. at p. 111 [“The hazard of accidental injury from passing traffic to an officer standing on the driver’s side of the vehicle may also be appreciable in some situations. Rather than conversing while standing exposed to moving traffic, the officer prudently may prefer to ask the driver of the vehicle to step out of the car and off onto the shoulder of the road where the inquiry may be pursued with greater safety to both.”].) Second, because there was more than one occupant in the car, it was safer for the officers to have them outside the car during the investigation. (See *Maryland v. Wilson* (1977) 519 U.S. 408, 414-415 [117 S.Ct. 882, 137 L.Ed.2d 41] [“[D]anger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car.”].) In view of this evidence, McCurdle’s articulated concerns for his safety were well-founded.

In contrast to *Arturo D. or Webster*, Oleo did not expressly refuse to produce his car registration – he claimed his inability to produce it resulted from the officer ordering him from the car. But at the time he was asked, Oleo informed Officer McCurdle that he did not know where the registration was. Faced with the prospect of Oleo rummaging through the car to look for his registration, McCurdle’s decision to search the glove compartment himself was reasonable. (See *People v. Martin* (1972) 23 Cal.App.3d 444, 447 [where driver stated he did not know where the car registration was, “[t]he officer was, for his own protection, justified in searching the glove compartment himself, rather than risk the danger that the passenger might pull a weapon out of the glove compartment”].)

In any event, nothing in the record suggests McCurdle ordered Oleo and his passenger out of the car, and then asked for Oleo’s license and registration as a pretext to search the car for evidence of a crime. The intrusion into the car was minimal; its scope reasonably confined to the glove compartment, where the car registration would typically be located. (*In re Arturo D., supra*, 27 Cal.4th at p. 86 [“Limited warrantless searches for required registration and identification documentation are permissible when, following the failure of a traffic offender to provide such documentation to the citing officer upon demand, the officer conducts a search for those documents in an area where such

documents reasonably may be expected to be found.”].) The suppression motion was properly denied.

**DISPOSITION**

The judgment is affirmed.

**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**JACKSON, J.**